



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

In re PATENT application of
GRESS et al.

Group Art Unit: 2155

Application No. 09/633,899

Examiner: Dinh

Filed: August 7, 2000

Docket: 95-445

Title: Unified Messaging Feature That Plays Greeting
Based On The Received Calling Party Number

Date: Tuesday, October 9, 2007

Monday, October 8, 2007 = Holiday

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

- 1 ☐ **NOTICE OF APPEAL:** Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision (not Advisory Action) of the Examiner
- 2 ☒ **BRIEF** on appeal in this application attached
- 3 ☐ An **ORAL HEARING** is respectfully requested under Rule 194 (due two months after Examiner's Answer -- unextendable).
- 4 ☐ Reply Brief is attached in triplicate (due two months after Examiner's Answer -- unextendable).

5. FEE CALCULATION:		Large/Small Entity	
If box 1 above is X'd, see box 12 below <u>first</u> and decide:	enter	\$510/255*	\$
If box 2 above is X'd, see box 12 below <u>first</u> and decide:	enter	\$510/255*	\$ 510
If box 3 above is X'd, see box 12 below <u>first</u> and decide:	enter	\$10300/515*	\$
If box 4 above is X'd,	enter nothing	- 0 - (no fee)	
6. <u>Original</u> due date: October 8, 2007 = Holiday			
7. Petition is hereby made to extend the original due date to cover the date this response is filed for which the requisite fee is attached	(1 mo) \$120/\$60 (2mos) \$450/\$225 (3mos) \$1020/\$510 (4mos) \$2160/\$1080	+	
8. Enter any previous extension fee paid [] previously since above <u>original</u> due date (item 6); [] with concurrently filed amendment		-	
9. Subtract line 8 from line 7 and enter: Total Extension Fee			
9a. Terminal Disclaimer Fee			\$
10. TOTAL FEE ATTACHED =			\$ 510.00

11. ☐ *Fee NOT required if/since paid in prior appeal in which the Board of Patent Appeals and Interferences did not render a decision on the merits.

CHARGE STATEMENT: The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (missing or insufficient fee only) now or hereafter relative to this application and the resulting Official document under Rule 20, or credit any overpayment, to our Account/Order No. 50-1130/95-445 for which purpose a duplicate copy of this sheet is attached. This CHARGE STATEMENT does not authorize charge of the issue fee until/unless an issue fee transmittal form is filed.

Atty:
Edward J. Stemberger

Customer No. 23164

Reg. No. 36,017

Tel: (202) 261.1014, Fax (202) 887-0336



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: GRESS et al.

Examiner: Dinh, K.

Application No.: 09/633,899

Group Art Unit: 2155

Filed: August 7, 2000

Docket: 95-445

For: Unified Messaging Feature That Plays Greetings
Based On The Received Calling Party Number

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

MAIL STOP: APPEAL BRIEF – PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

This is an appeal of the final rejection of claims 1-38 in the above-identified patent application.

This Appeal Brief is submitted as required by 37 C.F.R. §41.37.

1. **Real Party in Interest:**

This application is assigned to Cisco Technology, Inc., the real party of interest.

2. **Related Appeals and Interferences:**

There are no other appeals or interferences known to Appellant that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. **Status of Claims:**

Claims 1-38 are pending in this application. Claims 1-38 stand rejected by the Examiner and are appealed.

10/10/2007 MAILED1 00000060 09633899

01 FC:1402

510.00 0P

4. Status of any Amendment Filed Subsequent to Final Rejection:

An Amendment was filed on June 4, 2007 in response to the final Office Action of April 4, 2007. As indicated in the Advisory Action, this Amendment was not entered since it raised new issues.

5. Summary of Claimed Subject Matter:

The claimed subject matter includes independent claims 1, 12, 18, and 29 and dependent claims 2-11, 13-17, 19-28, and 30-38.

Independent claim 1 recites a method in an application server (page 7, lines 14-16, FIG. 2, item 66) for playing a messaging prompt of a called party to a calling party. Calling party number information is received specifying a calling party (page 10, lines 14-22, FIG. 4, step 200). Stored calling party number information is accessed from an Internet Protocol (IP) based database server configured for storing calling party number information (page 10, lines 26-28, FIG. 4, step 204). The received calling party number information is compared to the stored calling party number information to determine if there is a match between the received calling party number information and the stored calling party number information (page 11, lines 3-6, FIG. 4, step 206). Based on a determined match (page 11, lines 12-13, FIG. 4, step 208) of the stored calling party number information, the calling party is identified as a matched calling party, and a personalized, non generic voice message is retrieved having a recorded voice of the called party corresponding to the matched, stored calling party number information, for playback as the messaging prompt to the matched calling party (page 11, lines 17-19 and lines 6-11, FIG. 4, steps 212, 214).

Independent claim 12 recites a messaging system for playing a messaging prompt of a called party to a calling party in response to a request for execution of a messaging operation. The request contains calling party number information (page 10, lines 18-20). The messaging system includes an application runtime environment (page 9, lines 13-24) configured for retrieving, for playback as the messaging prompt to the calling party, a personalized, non generic voice message having a recorded voice of the called party (page 11, lines 17-19 and lines 6-11, FIG. 4, steps 212, 214), based on a match of the received calling party number information with

calling party number information stored in an Internet Protocol (IP) based database server, the match identifying a matched calling party (page 11, lines 12-13, FIG. 4, step 208), the personalized voice message corresponding to the matched, stored calling number information of the matched calling party (page 11, lines 15-19, FIG. 4).

Independent claim 18 recites a computer readable medium (page 10, lines 11-13) having stored thereon sequences of instructions for an application server to perform playing a messaging prompt of a called party to a calling party. The sequence of instructions including instructions for performing the steps of: receiving calling party number information specifying a calling party (page 10, lines 14-22, FIG. 4, step 200); accessing stored calling party number information from an Internet Protocol (IP) based database server configured for storing calling party number information (page 10, lines 26-28, FIG. 4, step 204); comparing the received calling party number information to the stored calling party number information to determine if there is a match between the received calling party number information and the stored calling party number information (page 11, lines 3-6, FIG. 4, step 206); and based on a determined match of the stored calling party number information identifying the calling party as a matched calling party (page 11, lines 12-13, FIG. 4, step 208), retrieving a personalized, non generic voice message having a recorded voice of the called party corresponding to the matched, stored calling party number information, for playback as the messaging prompt to the matched calling party (page 11, lines 17-19 and lines 6-11, FIG. 4, steps 212, 214).

Independent claim 29 recites messaging system for playing a messaging prompt of a called party to a calling party in response to a request for execution of a messaging operation. The request contains calling party number information (page 10, lines 18-20). The messaging system includes means for storing a personalized, non generic voice message having a recorded voice of the called party (page 11, lines 4-6). The system also includes means for retrieving, for playback as the messaging prompt to the calling party, the personalized voice message (page 11, lines 15-19) based on a match of the received calling party number information with calling party number information stored in an Internet Protocol (IP) based database server, the match identifying a matched calling party (page 11, lines 12-13, FIG. 4, step 208), the personalized voice message corresponding to the matched, stored calling number information of the matched

calling party (page 11, lines 17-19 and lines 6-11, FIG. 4, steps 212, 214).

6. Grounds of Rejection to be Reviewed on Appeal:

A. Whether claims 1- 38 fail to comply with the written description requirement under 35 U.S.C. 112, first paragraph.

B. Whether claims 1, 2, 5, 9-13, 15, 18-19, 22, 26-29, 31 and 34 are unpatentable under 35 USC §102(e) as anticipated by U.S. Patent Application No. US 2003/0147518A1 to Albal et al.

7. Arguments:

A. Claims 1-38 comply with the written description requirement under 35 U.S.C. 112, first paragraph.

The independent claims recite that the voice message is a personalized, non generic voice message. The term “non generic” has been added to further define the term “personalized” in the claims. With regard to the claimed “personalized” voice message, the broadest reasonable interpretation cannot be inconsistent with the specification, which describes the personalized voice message at page 11 as a message different from a generic message. For example, at page 11, lines 4-11, regarding the personalized voice message, if a called party’s friend is expected to call from calling number 408-555-555, the called party can correspond this number to a personalized message such as, “Hello Joe, I just left. Meet me at the golf course”. More particularly, the specification at page 11, lines 12-19 recites,

If there is no match the application server 66 in step 210 generates an HTML document with XML tags specifying playing a generic message 310 previously recorded by the subscriber. If there is a match, the application server 66 in step 212 generates an HTML document with XML tags specifying playing the personalized, pre-recorded message 300 corresponding to the matched ANI.

Thus, page 11, lines 12-19 explicitly describes this personalized message is not the generic message 310 previously recorded by the called party, and thus the personalized message

has been defined as non generic in the claims. The MPEP 2163 (page 2100-173, Rev 5, August 2006) states that “what is conventional or well known to one of ordinary skill in the art need not be disclosed in detail.” An adequate description requirement is met if a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing even if every nuance of the claims is not explicitly described in the specification. See, e.g., *Vas-Cath*, 935 F.2d, at 1563, 19 USPq2d at 1116; *Martin v. Johnson*, 454, F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating “the description need not be in *ipsis verbis* [i.e., “in the same words” to be sufficient”).

Accordingly, it is submitted that the claimed term “personalized non generic voice message” is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the invention, at the time the application was filed, had possession of the claimed invention. Therefore, the rejection under 35 U.S.C. 112, first paragraph is improper.

B. Claims 1, 2, 5, 9-13, 15, 18-19, 22, 26-29, 31 and 34 are patentable under 25 U.S.C. 102(e) as not being anticipated by Albal et al.

The independent claims recite that, based on a determined match of calling party number information identifying a matched calling party, a personalized non generic voice message is retrieved, having a recorded voice of the called party corresponding to the matched, stored calling party number information, for playback as the messaging prompt to the matched calling party.

As illustrated in the specification at page 11, lines 4-11, if Joe has been identified as a matched calling party to be matched with a message, the personalized voice message can be, “Hello, Joe, I just left. Meet me at the golf course.” No such personalized voice message as a prompt for a matched calling party is disclosed, expressly or inherently, by Albal et al. The Examiner is reminded that, “claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their ‘broadest reasonable interpretation.’” MPEP § 2111.01 at 2100-48 (Rev. 3, Aug. 2005) (quoting *In re Marosi*, 710 F.2d 799, 802, 218 USPQ 289, 292 (Fed. Cir. 1983)(emphasis in original)).

The Examiner cites Albal et al. at paragraphs [0031] to [0033] as disclosing, “the subscriber can instruct the communication node to play a pre-recorded message or announcement”. Albal et al. disclose at paragraph [0031] that “the subscriber may instruct the communication node to play a pre-recorded message or announcement”. Furthermore, at paragraph [0033], Albal et al. states that “the node notifies the caller that the subscriber is unavailable and/or routes the call to voicemail”.

Thus, Albal et al. merely disclose the conventional voicemail messaging system employing a generic voice message to all callers if the subscriber does not want to answer a call or is unavailable. There is no disclosing in Albal et al. that the pre-recorded message corresponds to the matched stored called party information as claimed. In Albal et al., once the subscriber has the caller’s information, **there is no further correspondence of this information, and thus there is no correspondence with a personalized voice message.** In fact, Albal provides no reference to the term “personalized”.

The Examiner also cites Albal et al. at paragraphs [0040] and [0046] to [0050] as disclosing, “automatically identifying the user and providing a personal greetings (sic) to the user”. Paragraph [0040] of Albal et al. do not disclose retrieving a personalized voice message having a recorded voice of the called party for playback as the messaging prompt to a matched calling party. Paragraph [0040] of Albal et al. merely discloses that the subscriber can issue a voice command such as, “Call Bob at home” and the node will access Bob’s number and place the call. This is no disclosure of retrieving a personalized voice message corresponding to the matched, stored calling party number information, for playback as the messaging prompt to the matched calling party as claimed.

Paragraph [0046] of Albal et al. discloses that the node 212 provides a welcome announcement to the caller. There is no disclosure that this announcement is a personalized voice message having a recorded voice of the called party. To the contrary, since Albal et al. discloses at paragraph [0047] the use of “various dialog voice personalities (i.e., a female voice, a male voice, etc.) and that the node 212 can implement various grammars (i.e., vocabulary) to detect and respond to the audio inputs from the user.” Thus, the node 212 provides a generic male or female voice to the user: hence, Albal et al. does not disclose providing a personalized

non generic voice message having a recorded voice of the called party as a prompt to a matched calling party.

Furthermore, at paragraph [0048] Albal et al. disclose that the greeting for the user is from “a personal agent”. The user is identified since the user is using a phone registered with the system. In fact, in paragraph [0048], Bob is the user using a phone registered with the system and the greeting to Bob is, “Hi, this is your personal agent, Maya. Welcome Bob. How may I help you?” The voice of “Maya” is not a recorded voice of a called party as claimed, since a call has yet to be placed by Bob. Interpreting the “called party” as covering the voicemail system of Albal et al. is unreasonable: the broadest *reasonable* interpretation must be (1) consistent with the specification, and (2) consistent with the interpretation that those skilled in the art would reach. “During patent examination, the pending claims must be ‘given their broadest reasonable interpretation consistent with the specification.’” MPEP §2111 at 2100-46 (Rev. 3, Aug. 2005) (*quoting In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)). “The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.” MPEP §2111.01 at 2100-47 (Rev. 3, Aug. 2005) (*citing In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999)). Any other interpretation would be inconsistent with the interpretation that those skilled in the art would reach, and hence would be unreasonable. *Cf. In re Cortright*, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

Thus, it is clear that Albal et al. do not disclose a personalized voice message having a recorded voice of the called party for playback as the messaging prompt to a matched calling party as claimed.

Still further, in Albal et al., the subscriber makes the decision to either answer the call, play a non-personalized pre-recorded message or disconnect. Claims 1, 12 and 29 recite that the messaging system is in an application server that performs the claimed features. Also, claim 18 recites a computer readable medium that performs the claimed steps.

Again, there is no disclosure in Albal et al. that the “pre-recorded message” is personalized and non generic, or that the message is in the recorded voice of the called party for playback as the messaging prompt to a matched calling party as claimed. See MPEP 2131.

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). "Anticipation cannot be predicated on teachings in the reference which are vague or based on conjecture." *Studiengesellschaft Kohle mbH v. Dart Industries, Inc.*, 549 F. Supp. 716, 216 USPQ 381 (D. Del. 1982), *aff'd*, 726 F.2d 724, 220 USPQ 841 (Fed. Cir. 1984). Therefore, the rejection is improper.


For these and other reasons, the §102 rejection of independent claims 1, 12, 18 and 29 and the claims that depend there-from should be withdrawn.

Conclusion

For the reasons set forth above, it is clear that Appellant's claims 1-38 are in full compliance with 35 U.S.C. 112 and are patentable over the references applied. Accordingly the appealed claims 1-38 should be deemed patentable over the applied references. It is respectfully requested that this appeal be granted and that the Examiner's rejections be reversed.

To the extent necessary, Appellant petitions for an extension of time under 37 C.F.R. 1.136 and 37 C.F.R. 41.37(e). Please charge any shortage in fees due in connection with the filing of this paper, including any missing or insufficient fees under 37 C.F.R. 1.17(a) or 41.20(b)(2), to Deposit Account No. 50-0687, under Order No. 95-445, and please credit any excess fees to such deposit account.

Respectfully submitted,



Edward J. Stemberger
Registration No. 36,017

Customer No. 23164

Tuesday, October 9, 2007
(October 8 = Holiday)

CLAIM APPENDIX – CLAIMS ON APPEAL

1. (Previously Presented) A method in an application server for playing a messaging prompt of a called party to a calling party, the method comprising:

receiving calling party number information specifying a calling party;
accessing stored calling party number information from an Internet Protocol (IP) based database server configured for storing calling party number information;

comparing the received calling party number information to the stored calling party number information to determine if there is a match between the received calling party number information and the stored calling party number information; and

based on a determined match of the stored calling party number information identifying the calling party as a matched calling party, retrieving a personalized, non generic voice message having a recorded voice of the called party corresponding to the matched, stored calling party number information, for playback as the messaging prompt to the matched calling party.

2. (Original) The method of claim 1, wherein the received and stored calling party number information each includes at least a portion of a telephone number of the calling party.

3. (Previously Presented) The method of claim 1, wherein the accessing step includes accessing the IP-based database server according to lightweight directory access protocol.

4. (Previously Presented) The method of claim 1, wherein the retrieving step includes accessing the personalized voice message stored in the IP-based database server according to lightweight directory access protocol.

5. (Original) The method of claim 1, wherein the retrieving step includes retrieving the stored personalized voice message from the IP based database server.

6. (Original) The method of claim 1, wherein the step of receiving calling party number information includes receiving an HTTP request from the calling party, the HTTP request containing the calling party number information.

7. (Original) The method of claim 6, further including generating an HTML page having XML tags for specifying playing of the personalized voice message.

8. (Original) The method of claim 7, wherein the step of generating the HTML page includes inserting a first media tag including a .wav file and a second media tag configured for controlling playing of the .wav file.

9. (Original) The method of claim 1, further including corresponding a flag to certain of the stored calling party number information, the flag indicating a calling feature defined by a called party for use by the calling party.

10. (Original) The method of claim 9, wherein the calling feature defines one of a paging operation and a single number reach operation.

11. (Original) The method of claim 1, further including receiving a dialed number identification string (DNIS), and wherein the accessing step includes accessing a subscribers' profile based on the DNIS, the subscriber's profile including the stored calling party number information and the corresponding personalized voice message.

12. (Previously Presented) A messaging system for playing a messaging prompt of a called party to a calling party in response to a request for execution of a messaging operation, the request containing calling party number information, the messaging system including:

an application runtime environment configured for retrieving, for playback as the messaging prompt to the calling party, a personalized, non generic voice message having a recorded voice of the called party based on a match of the received calling party number

information with calling party number information stored in an Internet Protocol (IP) based database server, the match identifying a matched calling party, the personalized voice message corresponding to the matched, stored calling number information of the matched calling party.

13. (Original) The system of claim 12, wherein the application runtime environment is configured to access a subscribers' profile based on a dialed number identification string (DNIS), the subscriber's profile including the stored calling party number information and the corresponding personalized voice message.

14. (Previously Presented) The system of claim 12, wherein the application runtime environment is configured to access the IP-based database server according to protocol.

15. (Original) The system of claim 12, wherein the received and stored calling party number information each includes at least a portion of a telephone number of the calling party.

16. (Original) The system of claim 12, wherein the application runtime environment is configured to dynamically generate in response to the request, a hypertext markup language (HTML) document having XML tags specifying playing of the personalized voice message.

17. (Original) The system of claim 16, wherein the application runtime environment is configured to generate the HTML page including inserting a first media tag including a .wav file and a second media tag configured for controlling playing of the .wav file.

18. (Previously Presented) A computer readable medium having stored thereon sequences of instructions for an application server to perform playing a messaging prompt of a called party to a calling party, the sequence of instructions including instructions for performing the steps of:

receiving calling party number information specifying a calling party;

accessing stored calling party number information from an Internet Protocol (IP) based database server configured for storing calling party number information;

comparing the received calling party number information to the stored calling party number information to determine if there is a match between the received calling party number information and the stored calling party number information; and

based on a determined match of the stored calling party number information identifying the calling party as a matched calling party, retrieving a personalized, non generic voice message having a recorded voice of the called party corresponding to the matched, stored calling party number information, for playback as the messaging prompt to the matched calling party.

19. (Original) The medium of claim 18, wherein the received and stored calling party number information each includes at least a portion of a telephone number of the calling party.

20. (Previously Presented) The medium of claim 18, wherein the accessing step includes accessing the IP-based database server according to lightweight directory access protocol.

21. (Previously Presented) The medium of claim 18, wherein the retrieving step includes accessing the personalized voice message stored in the IP-based database server according to lightweight directory access protocol.

22. (Original) The medium of claim 18, wherein the retrieving step includes retrieving the stored personalized voice message from the IP based database server.

23. (Original) The medium of claim 18, wherein the step of receiving calling party number information includes receiving an HTTP request from the calling party, the HTTP request containing the calling party number information.

24. (Original) The medium of claim 23, further including generating an HTML page having XML tags for specifying playing of the personalized voice message.

25. (Original) The medium of claim 24, wherein the step of generating the HTML page includes inserting a first media tag including a .wav file and a second media tag configured for controlling playing of the .wav file.

26. (Original) The medium of claim 18, further including corresponding a flag to certain of the stored calling party number information, the flag indicating a calling feature defined by a called party for use by the calling party.

27. (Original) The medium of claim 26, wherein the calling feature defines one of a paging operation and a single number reach operation.

28. (Original) The method of claim 18, further including receiving a dialed number identification string (DNIS), and wherein the accessing step includes accessing a subscriber's profile based on the DNIS, the subscriber's profile including the stored calling party number information and the corresponding personalized voice message.

29. (Previously Presented) A messaging system for playing a messaging prompt of a called party to a calling party in response to a request for execution of a messaging operation, the request containing calling party number information, the messaging system including:

means for storing a personalized, non generic voice message having a recorded voice of the called party, and

means for retrieving, for playback as the messaging prompt to the calling party, the personalized voice message based on a match of the received calling party number information with calling party number information stored in an Internet Protocol (IP) based database server, the match identifying a matched calling party, the personalized voice message corresponding to the matched, stored calling number information of the matched calling party.

30. (Previously Presented) The system of claim 29, wherein the retrieving means is configured to access the IP-based database server according to lightweight directory access protocol.

31. (Original) The system of claim 29, wherein the received and stored calling party number information each includes at least a portion of a telephone number of the calling party.

32. (Original) The system of claim 29, wherein the retrieving means is configured to dynamically generate in response to the request, a hypertext markup language (HTML) document having XML tags specifying playing of the personalized voice message.

33. (Original) The system of claim 32, wherein the retrieving means is configured to generate the HTML page including inserting a first media tag including a .wav file and a second media tag configured for controlling playing of the .wav file.

34. (Original) The system of claim 29, wherein the retrieving means is configured to access a subscribers' profile based on a dialed number identification string (DNIS), the subscriber's profile including the stored calling party number information and the corresponding personalized voice message.

35. (Previously Presented) The method of claim 1, wherein the personalized voice message contains information specifically for matched calling party.

36. (Previously Presented) The system of claim 12, wherein the personalized voice message contains information specifically for matched calling party.

37. (Previously Presented) The computer readable medium of claim 18, wherein the personalized voice message contains information specifically for matched calling party.

38. (Previously Presented) The messaging system of claim 29, wherein the personalized voice message contains information specifically for matched calling party.

Gress et al. – Application No. 09/633,899

EVIDENCE APPENDIX

Not Applicable

Gress et al. – Application No. 09/633,899

RELATED PROCEEDINGS APPENDIX

Not Applicable